



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET- SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

DOCKET NO.: CWA-08-2006-0033

| | | |
|--------------------------------|---|--------------------|
| IN THE MATTER OF: |) | |
| |) | |
| KARL'S FARMS DAIRY INC. |) | |
| 12265 Race Street |) | FINAL ORDER |
| Northglenn, CO |) | |
| |) | |
| RESPONDENT |) | |

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

08.10.06
DATE

SIGNED
Elyana R. Sutin
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

Docket No. CWA-08-2006-0033

IN THE MATTER OF:

Karl's Farms Dairy, Inc.
12265 Race Street
Northglenn, Colorado 80241

Respondent

**Complaint and Expedited
Consent Agreement ("CESA")**

Complainant, United States Environmental Protection Agency, Region 8 ("EPA"), and the Karl's Farms Dairy, Inc. ("Respondent"), by their undersigned representatives, hereby consent and agree as follows:

Introduction

1. The Administrator of the EPA has determined that an administrative penalty action is appropriate for the period of violations alleged below.
2. This matter is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties set forth at 40 C.F.R. Part 22.
3. Therefore, EPA has jurisdiction over this matter pursuant to section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g) and is authorized to issue civil administrative actions and assess civil penalties for violations of the CWA.

4. EPA and the Respondent (collectively referred to as the “parties”) have agreed to the settlement of this Complaint and Expedited Consent Agreement (“CESA”) as authorized by 40 C.F.R. § 22.13(b).

5. Respondent, Karl’s Farms Dairy, Inc., is a corporation and is registered to do business as a corporation in the State of Colorado.

6. At all times pertinent to this CESA, Respondent owned and operated a dairy and milk bottling operation (“Facility”) located at 12265 Race Street, Northglenn, Colorado.

7. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

8. Respondent’s process wastewater contained milk residue, among other substances, that are considered “pollutants” within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).

9. Process wastewater from the Facility is discharged to the City of Northglenn (“City”), Colorado, publicly owned treatment works (“POTW”). Respondent is therefore considered an Indirect Discharger within the meaning of 40 C.F.R. § 403.3(g), and an Industrial User within the meaning of 40 C.F.R. § 403.3(h).

10. On each year during July 1, 2001 through March 9, 2006, the City issued an industrial user permit to Respondent, which required Respondent to maintain its wastewater within a pH range of 5.5 to 9.5 s.u. (“pH limits”) and established monitoring and reporting requirements.

11. From July 1, 2001 until October 14, 2004, The City conducted pH sampling in lieu of the Respondent. Beginning October 15, 2004 until March 9, 2006, Respondent was required to

conduct daily pH sampling at the compliance point and provide monitoring reports to the City monthly.

12. This CESA covers the alleged violations associated with Respondent's exceedances of its pH limits from July 1, 2001 through March 9, 2006 as described in Attachment A and Respondent's failure to monitor and report pH at the frequency required in the permit from October 15, 2005 through March 9, 2006 as described in Attachment B.

Allegations

13. From July 1, 2001 through March 9, 2006, Respondent experienced violations of the pH limits identified in its industrial user permit. These violations are summarized in Attachment A. Each violation of the pH limits described in Attachment A constitutes a violation of Respondent's industrial user permit.

14. From October 15, 2004 through March 9, 2006, Respondent did not conduct daily pH monitoring and submit monthly monitoring reports to the City as required in its industrial user permit. These violations are summarized in Attachment B. Each failure to monitor and report in Attachment B constitutes a violation of Respondent's industrial user permit.

15. Respondent, by failing to meet the pH limit requirements and monitoring and reporting requirements identified in its industrial user permit as required by 40 C.F.R. §§ 403.5(b)(2) and 403.5(d), which are Pretreatment Standards pursuant to section 307(d) of the Act, 33 U.S.C. § 1317(d), violated section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

Settlement

16. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations and violations alleged herein.

17. Respondent waives the right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Complaint and Consent Agreement.

18. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this Complaint and Consent Agreement without further litigation is the most appropriate means of resolving this matter.

19. This Complaint and Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon the Respondent and Respondent's employees.

20. This Complaint and Consent Agreement contains all terms of the settlement agreed to by the parties.

Civil Penalty

21. Pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA has determined that an appropriate civil penalty to settle this action is the amount of Thirty Thousand Dollars (\$30,000). Respondent consents and agrees to pay a civil penalty in the amount of Thirty Thousand Dollars (\$30,000), in the manner described below in this paragraph:

- a. Payment is due within 30 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM. EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15251-6859

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

A copy of the check shall be sent simultaneously to:

Ms. Tina Artemis
Regional Hearing Clerk, Mail Code: 8RC
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and

Darcy O'Connor
Environmental Scientist, Mail Code: 8-ENF-W-NP
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the final consent order, and each subsequent

thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

General Provisions

40. This Complaint and Consent Agreement shall not relieve Respondent of the obligation to comply with all applicable provisions of federal, state or local law.

41. Failure by Respondent to comply with any of the terms of this Complaint and Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

42. Nothing in this Complaint and Consent Agreement shall be construed as a waiver by the U.S. EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Complaint and Consent Agreement.

43. Each undersigned representative of the parties to this Complaint and Consent Agreement certifies that he or she is fully authorized by the party represented to execute and bind the parties to its terms and conditions.

44. The parties agree to submit this Complaint and Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.

45. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this Complaint and Consent Agreement.

46. This Complaint and Consent Agreement resolves Respondent's liability for federal civil penalties under sections 309(g) of the CWA, 33 U.S.C. § 1319(g), for the alleged violations contained herein. This Complaint and Consent Agreement shall not in any case affect EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

47. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Complaint and Consent Agreement.

In the Matter of: Karl's Farms Dairy, Inc.
Docket No:
(Continued)

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8,
Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: 08/07/06

By: Eddie A. Sierra for/
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

Date: 8/7/06

By: SIGNED
Michael T. Risner, Director
David Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

Date: 8/7/06

By: SIGNED
Eduardo Quintana, Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

In the Matter of: Karl's Farms Dairy, Inc.
Docket No:
(Continued)

KARL'S FARMS DAIRY, INC.,
Respondent.

Date: **7-06-06**

By: **Edward L. Dshland**

Name, Title: **Secretary**

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT/CONSENT AGREEMENT/FINAL ORDER** in the matter **KARL'S FARMS DAIRY, INC., DOCKET NO.: CWA-08-2006-0033** was filed with the Regional Hearing Clerk on August 10, 2006.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Eduardo Quintana, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on August 10, 2006, to:

Edward L. Dushland, Secretary
Karl's Farm Dairy
P.O. Box 159
Eastlake, CO 80614

And

U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

August 10, 2006

SIGNED _____
Tina Artemis
Regional Hearing Clerk

IF YOU WOULD LIKE TO RECEIVE COPIES OF THE ATTACHMENT, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON AUGUST 10, 2006.

